

## UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Index No. 1:18-CV-05777-RJS

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, et al.

Plaintiff(s) Petitioner(s)

against

BMC STOCK HOLDINGS, INC.

Defendant(s) Respondent(s)

7/3/18

Calendar No.

AFFIDAVIT  
OF  
SERVICE

STATE OF DELAWARE, COUNTY OF: NEW CASTLE

Ss.:

The undersigned, being sworn, says: Deponent is not a party herein, is over 18 years of age and resides at Wilmington, DE

On 7/5/18

at 4:15 P .M., at C/O CORPORATION SERVICE COMPANY, 251 LITTLE FALLS DRIVE, WILMINGTON, DE 19808

deponent served the within

- ☐ summons and complaint  
☐ subpoena duces tecum  
☐ citation

☒ ORDER

on BMC STOCK HOLDINGS, INC.

☒ defendant ☐ witness hereinafter called therein  
☐ respondent the recipient lamed

INDIVIDUAL

1. ☐

by delivering a true copy of each to said recipient personally; deponent knew the person so served to be the person described as said recipient therein.

CORPORATION

2. ☒

a DELAWARE corporation, by delivering thereat a true copy of each to LYNANNE GARES

personally, deponent knew said corporation so served to be the corporation, described in same as said recipient and knew said individual to be MANAGING AGENT thereof

SUITABLE  
AGE PERSON3. ☐by delivering thereat a true copy of each to a person of suitable age and discretion. Said premises is recipient's ☐ actual place of business ☐ dwelling place ☐ usual place of abode within the state.AFFIXING TO  
DOOR, ETC.4. ☐by affixing a true copy of each to the door of said premises, which is recipient's ☐ actual place of business ☐ dwelling place ☐ usual place of abode within the state. Deponent was unable, with due diligence to find recipient or a person of suitable age and discretion, thereat, having called thereMAILING TO  
RESIDENCE  
USE WITH 3 OR 45A. ☐Deponent talked to at said premises who stated that recipient ☐ lived ☐ worked there.

Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to recipient at recipient's last known residence, at and deposited

said envelope in an official depository under exclusive care and custody of the U.S. Postal Service within New York State.

MAILING TO  
BUSINESS  
USE WITH 3 OR 45B. ☐

Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class post paid envelope properly addressed to recipient at recipient's actual place of business, at

in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the recipient.

DESCRIPTION

☒

<input type="checkbox"/> Male	<input checked="" type="checkbox"/> White Skin	<input type="checkbox"/> Black Hair	<input type="checkbox"/> White Hair	<input type="checkbox"/> 14-20 Yrs.	<input type="checkbox"/> Under 5'	<input type="checkbox"/> Under 100 Lbs.
<input checked="" type="checkbox"/> Female	<input type="checkbox"/> Black Skin	<input checked="" type="checkbox"/> Brown Hair	<input type="checkbox"/> Balding	<input type="checkbox"/> 21-35 Yrs.	<input type="checkbox"/> 5'0"-5'3"	<input type="checkbox"/> 100-130 Lbs.
	<input type="checkbox"/> Yellow Skin	<input type="checkbox"/> Blonde Hair	<input type="checkbox"/> Mustache	<input checked="" type="checkbox"/> 36-50 Yrs.	<input checked="" type="checkbox"/> 5'4"-5'8"	<input checked="" type="checkbox"/> 131-160 Lbs.
	<input type="checkbox"/> Brown Skin	<input type="checkbox"/> Gray Hair	<input type="checkbox"/> Beard	<input type="checkbox"/> 51-65 Yrs.	<input type="checkbox"/> 5'9"-6'0"	<input type="checkbox"/> 161-200 Lbs.
	<input type="checkbox"/> Red Skin	<input type="checkbox"/> Red Hair	<input type="checkbox"/> Glasses	<input type="checkbox"/> Over 65 Yrs. [- I Over 6'	<input type="checkbox"/> Over 200 Lbs.	

Other identifying features:

WITNESS  
FEES☐

\$ the authorizing traveling expenses ☐ was paid (tendered) to the recipient  
and one days' witness fee: ☐ was mailed to the witness with subpoena copy.

MILITARY  
SERVICE☐

I asked the person spoken to whether recipient was in active military service of the United States or of the State of New York in any capacity whatever and received a negative reply. Recipient wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the recipient is not in military service of New York State or of the United States as that term is defined in either the State or in the Federal statutes.

Sworn to before me on 7/5/18

License No.

DENORRIS ANGELO BRITT  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires May 1, 2022

KEVIN S. DUNN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA, *et al.*,

Petitioners,

-v-

BMC STOCK HOLDINGS, INC.,

Respondent.

No. 18-cv-5777 (RJS)  
ORDER

RICHARD J. SULLIVAN, District Judge:

On June 26, 2018, Petitioners commenced this action by filing a petition to compel arbitration pursuant to 9 U.S.C. § 4. (Doc. No. 1.) Petitioners now seek “an Order to Show Cause . . . [and] a hearing on Petitioners’ motion to compel arbitration . . . as soon as the Court’s convenience will permit, and, if at all possible, prior to July 20, when National Union is due to respond to an action Respondent filed in California . . . .” (Doc. No. 9.) However, the Federal Arbitration Act does not require a “live evidentiary hearing . . . when a ‘hearing on the papers’ will sufficiently apprise the Court of all legal and factual issues and there are no disputed issues of material fact.” *Epstein Becker & Green, P.C. v. Brown*, No. 10-cv-4784 (LTS), 2010 WL 3835067, at \*1 (S.D.N.Y. Sept. 10, 2010) (citing *Marks 3 Zet-Ernst Marks GmbH & Co. KG v. Presstek, Inc.*, 455 F.3d 7, 14 (1st Cir. 2006)). Moreover, Section 6 of the Federal Arbitration Act provides that petitions to compel arbitration “shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.” 9 U.S.C. § 6; *see also ISC Holding AG v. Nobel Biocare Fin. AG*, 688 F.3d 98 (2d Cir. 2012).

Accordingly, IT IS HEREBY ORDERED THAT Petitioners’ request for an order to show cause is DENIED. IT IS FURTHER ORDERED THAT Petitioners shall file a memorandum of law

in support of their petition by July 13, 2018, Respondent shall submit its opposition to the petition by August 3, 2018, and Petitioners shall submit their reply by August 13, 2018. Once Petitioners' petition is fully briefed, the Court will determine whether it is necessary to hold a hearing in this matter.

IT IS FURTHER ORDERED THAT, by July 7, 2018, Petitioners shall serve Respondent with a copy of this Order and file a certificate of service on ECF indicating that this service was effectuated. Respondent shall thereafter file a notice of appearance through ECF.

To the extent that Petitioners wish to stay the action filed by Respondent in the United States District Court for the Central District of California, they should file a motion to do so in that court.

SO ORDERED.

Dated: July 3, 2018  
New York, New York

  
RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE